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Representing the United States of America

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

-00-

UNITED STATES OF AMERICA,
Plaintiff,
vs.
DOUGLAS HAIG,
Defendant.

Case No.: 2:18-cr-00256-JCM-VCF

**GOVERNMENT'S RESPONSE
IN OPPOSITION TO DEFENDANT'S
"MOTION TO PRECLUDE
IRRELEVANT AND UNDULY
PREJUDICIAL EVIDENCE" [ECF No.
40]**

The United States of America, by and through NICHOLAS A. TRUTANICH, United States Attorney, and PATRICK BURNS, CRISTINA D. SILVA, and NICHOLAS D. DICKINSON, Assistant United States Attorneys, hereby respectfully submits this Response in Opposition to Defendant’s “Motion to Preclude Irrelevant and Unduly Prejudicial Evidence” [ECF No. 40].

I. Factual and Procedural Background

This case arises out of the investigation into the October 1, 2017 mass shooting committed by Stephen Paddock (Paddock) at the Route 91 Harvest musical festival. In the Mandalay Bay hotel suites from which Paddock staged his attack, investigators located a box with a shipping label bearing Defendant Douglas Haig (Haig)'s name and Mesa, Arizona address.¹ Beginning on October 2, 2017, agents from the Federal Bureau of Investigation (FBI) and the Bureau of Alcohol Tobacco, Firearms and Explosives (ATF) began a series of interviews with Haig. Haig admitted to meeting Paddock and selling him ammunition in both Las Vegas and Arizona on August 27 and September 19, 2017, respectively. Haig admitted to traveling to gun shows to sell ammunition. He admitted that he reloads ammunition,² but claimed he did so for personal use only. He denied selling reloaded ammunition. Haig denied that any of the ammunition recovered from the October 1 crime scene would have reloading marks consistent with the reloading equipment at his home.

A latent fingerprint examination revealed that Haig's fingerprints were on two pieces of .308/7.62 caliber ammunition removed from a magazine located in Paddock's room. A forensic firearms examination determined that those pieces of ammunition had toolmarks consistent with being reloaded, and were armor piercing and incendiary in nature. Investigators determined that Haig operated an ammunition business known as Specialized Military Ammunition (SMA). Haig used SMA to sell ammunition to customers in other states over the internet.³ SMA advertised the sale of armor piercing (AP), armor piercing incendiary (API), and high explosive

¹ Mesa is a suburb twenty miles east of Phoenix.

² Reloading is the mechanical process of assembling the component parts of an ammunition cartridge (bullet (projectile), gunpowder, primer, and cartridge case) into a finished piece of ammunition that can be fired out of a firearm.

³ Haig operated this business under an Arizona registered Limited Liability Company.

1 armor piercing incendiary ammunition (HEAPI).

2 On October 24, 2017, a search warrant was executed on Haig's residence. Agents seized
 3 hundreds of pounds of ammunition and ammunition components. Haig had ammunition or
 4 firearms-related equipment in virtually every room of the residence, and a workshop had been
 5 converted into a three-reloading press manufactory for ammunition.⁴ Numerous packages of
 6 API, AP, HEAPI, and other types of ammunition were packaged for sale with price tags affixed
 7 to them. Some of these packages contained Haig's SMA business cards. Haig also had bags and
 8 boxes of projectiles for assembling AP, API, and tracer ammunition. Haig's residence contained
 9 professional-looking SMA invoice tablets reflecting ammunition sales and numerous records
 10 showing that he sold AP, API, and HEAPI to scores of customers throughout the United States
 11 in more than twenty states. Based on interviews and review of these records, investigators
 12 identified four purchasers (besides Paddock) for whom Haig had either shipped armor piercing
 13 ammunition to Nevada or made a sale at a Las Vegas gun show. This review showed that Haig
 14 had sold ammunition at Las Vegas gun shows in at least 2016 and 2017.

15 The reloading presses from Haig's residence were forensically examined and compared to
 16 ammunition recovered from the October 1 crime scene and Haig's residence. As to the October
 17 1 scene, the armor piercing ammunition with Haig's latent prints had reloading toolmarks
 18 identified as being created by one of the reloading presses at Haig's residence. Armor piercing
 19 and incendiary ammunition loaded into five of Paddock's rifles had toolmarks identified as being
 20 created by that same reloading press. Armor piercing ammunition rounds recovered from Haig's
 21 workshop had reloading toolmarks identified as being made by the reloading press that made the
 22 ammunition in Paddock's rifles.

23
 24 ⁴ Haig was taking steps to automate this reloading assembly line.

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2 On August 22, 2018, a grand jury in the District of Nevada returned an indictment charging
3 Haig with one count of Engaging in the Business of Manufacturing Ammunition Without a
4 License (18 U.S.C. §§ 922(a)(1)(B); 924(a)(1)(D)). ECF No. 10. On September 5, 2018, Haig filed
5 a “Motion to Transfer Proceedings to District of Arizona.” ECF No. 18. The government filed
6 its response in opposition on September 17, 2018, and the Court denied the motion.⁵

7 On January 7, 2019, Haig filed a “Motion to Preclude Irrelevant and Unduly Prejudicial
8 Evidence.” ECF No. 40. The motion attaches a proposed order providing “that the Government
9 is precluded from introducing evidence connecting the Defendant to Steven [sic] Paddock and/or
10 the October 2017-mass shooting in Las Vegas, including testimony evidence was found in hotel
11 suites and the evidence was found on October 1, 2017.” ECF No. 40-1. Haig’s request appears
12 to seek exclusion of evidence that Haig, on multiple occasions sold Paddock ammunition that
13 was manufactured on Haig’s reloading press, as well as all the investigation and forensic
14 examination of that evidence. The Government’s response in opposition follows.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **II. Argument**

17 **A. Legal Standard for Relevant Evidence and the Exclusion of Irrelevant and Unfairly
18 Prejudicial Evidence Under Federal Rules of Evidence 401-403**

19 Federal Rule of Evidence 401 provides that “[e]vidence is relevant if: (a) it has any
20 tendency to make a fact more or less probable than it would be without the evidence; and (b) the
21 fact is of consequence in determining the action.” Rule 402 provides in part that “[i]rrelevant
22 evidence is not admissible.” Rule 403 permits a district court to exclude relevant evidence if the
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24 ⁵ Haig’s instant motion in limine incorrectly claims that the motion to transfer venue is still pending. ECF No. 40
n.2.

1 evidence's probative value is substantially outweighed by the danger of "unfair prejudice,
 2 confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting
 3 cumulative evidence." Evidence is unfairly prejudicial if it suggests a decision on an improper
 4 basis. *See* Fed. R. Evid. 403 Advisory Committee's Note. "[E]vidence is not prejudicial merely
 5 because it damages the opposing party's case." *United States v. Medina*, 755 F.2d 1269, 1274 (7th
 6 Cir.1985) (quoting *West v. Love*, 776 F.2d 170, 174 (7th Cir. 1985)). "Under the terms of the rule,
 7 the danger of prejudice must not merely outweigh the probative value of the evidence, but
 8 substantially outweigh it." *United States v. Mende*, 43 F.3d 1298, 1302 (9th Cir. 1995) (emphasis
 9 original).

10 District court judges enjoy broad discretion to deny exclusion of evidence under Rule 403,
 11 and their determinations will not be disturbed on appeal absent an abuse of that discretion. *Wood*
 12 *v. Alaska*, 957 F.2d 1544, 1550 (9th Cir. 1992) ("Because trial judges have broad discretion both
 13 to determine relevance and to determine whether prejudicial effect or other concerns outweigh
 14 the probative value of the evidence, we will find a [constitutional] violation only if we conclude
 15 that the trial court abused its discretion."). The Ninth Circuit has stated that exclusion of evidence
 16 under Rule 403 is "'an extraordinary remedy to be used sparingly because it permits the trial
 17 court to exclude otherwise relevant evidence.'" *United States v. Patterson*, 819 F.2d 1495, 1505 (9th
 18 Cir. 1987) (quoting *United States v. Meester*, 762 F.2d 867, 874–75 (11th Cir.), *cert. denied*, 474 U.S.
 19 1024, 106 S.Ct. 579, 88 L.Ed.2d 562 (1985)). The Ninth Circuit has also long recognized the
 20 effectiveness of limiting instructions in mitigating a risk of prejudice attaching to particular
 21 evidence. *See, e.g.*, *United States v. Montgomery*, 150 F.3d 983, 1001 (9th Cir. 1998). And in
 22 reviewing Rule 403 decisions, the Ninth Circuit "'presume[s] that juries will follow the district
 23 court's limiting instructions.'" *United States v. Norris*, 423 F. App'x 732, 734 (9th Cir. 2011)
 24 (quoting *United States v. Mende*, 43 F.3d 1298, 1302 (9th Cir. 1995)).

B. Haig's Multiple Sales of Ammunition to Stephen Paddock, His Statements About Those Sales, and the Firearms Evidence Recovered from Paddock's Suite Constitute the Core of the Government's Evidence that Haig Engaged in the Business of Manufacturing Ammunition Without a License

(i) Haig's Repeat Sales of Armor Piercing and Incendiary Ammunition to Paddock and the Recovery of that Manufactured Ammunition from Paddock's Suite and Five Rifles is Clearly Relevant to Proving that Haig Engaged in the Unlicensed Business of Manufacturing Ammunition

The Ninth Circuit affirms the admissibility of “evidence constituting ‘a part of the transaction that serves as the basis for the criminal charge.’” *United States v. Anderson*, 741 F.3d 938, 949 (9th Cir. 2013) (quoting *Dorsey*, 677 F.3d at 951). The doctrine also encompasses evidence that is “‘necessary to permit the prosecutor to offer a coherent and comprehensible story regarding the commission of the crime.’... because ‘[t]he jury cannot be expected to make its decision in a void—without knowledge of the time, place, and circumstances of the acts which form the basis of the charge.’” *Id.* (quoting *Dorsey* and *United States v. Vizcarra-Martinez*, 66 F.3d 1006, 1012 (9th Cir. 1995)). “This includes circumstantial evidence explaining the general nature of a defendant’s business activity and providing a context in which the transactions at issue took place.” *Id.* at 949–50 (citing *United States v. King*, 200 F.3d 1207, 1215 (9th Cir. 1999)). Indeed, that jury has an entitlement to know the contextual factors of the crime and its investigation. *United States v. Roberts*, 548 F.2d 665 (6th Cir. 1977) (“The jury is entitled to know the ‘setting’ of a case. It cannot be expected to make its decision in a void without knowledge of the time, place and circumstances of the acts which form the basis of the charge.”).

Title 18 U.S.C. § 921(21) defines § 922(a)(1)(B)'s phrase, "engaged in the business of[,]” as it applies to a manufacturer of ammunition. A manufacturer of ammunition is “engaged in the business” if the person “devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through

1 the sale or distribution of the ammunition manufactured[.]” The phrase “with the principal
 2 objective of livelihood and profit” is defined by 18 U.S.C. § 921(22) to mean “that the intent
 3 underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and
 4 pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms
 5 collection.”⁶ Much of the interpretive caselaw addresses this language in the context of a charge
 6 of dealing in firearms without a license under § 922(a)(1)(A), but the interpretive principles are
 7 equally applicable to a § 922(1)(1)(B) violation.

8 Courts that have interpreted the “engaged in the business of” language hold that it is a test
 9 of overall circumstances. The defendant’s sales activities must be shown to be something more
 10 than a hobby or the liquidation of a personal collection. The Third Circuit explained the relevant
 11 inquiry in *U.S. v. Palmieri*, 21 F.3d 1265, 1268 (3d Cir. 1994), *reversed and remanded on unrelated*
 12 *grounds*, 513 U.S. 957, 115 S.Ct. 413, 130 L.Ed.2d 329 (1994)):

13 In determining whether one is engaged in the business of dealing in firearms, the
 14 finder of fact must examine the intent of the actor and all circumstances
 15 surrounding the acts alleged to constitute engaging in business. This inquiry is not
 16 limited to the number of weapons sold or the timing of the sales. For example, the
 17 location of the sales, the price charged for and characteristics of the firearms sold,
 18 and the intent of the seller are all potentially relevant.

19 In determining whether the personal collection or hobby exception applies, “there is no bright
 20 line rule. The fact-finder must determine whether the transactions constitute hobby-related sales
 21 or engagement in the business of dealing from the nature of the sales and in light of their
 22 circumstances.” *Id.* at 1269. Repeat sales, including to the same customers, are key facts
 23 demonstrating that the defendant, rather than being a mere hobbyist or collector, was “engaging
 24 in the business” of dealing firearms or manufacturing ammunition. *See, e.g., U.S. v. Shipley*, 546

⁶ This section speaks of firearms, but appears intended to apply also to ammunition since it defines a common phrase applied in the immediately preceding paragraph to both firearms and ammunition.

1 Fed. Appx. 450, 456 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 2842, 189 L. Ed. 2d 810 (2014).⁷

2 In a case alleging that the defendant engaged in the business of manufacturing
 3 ammunition, there can be no more relevant evidence than proof that he engaged in repetitive
 4 sales of ammunition. That critical probative value is even more enhanced when the repeat sales
 5 were conducted to the same customer and in multiple locations and types of locations, such as
 6 sales occurring in different states and in both gun show and private residential contexts. Haig's
 7 repeat sales to Stephen Paddock demonstrate all of those things and therefore constitute powerful
 8 evidence that Haig, rather than carrying on "a strong hobby" as he described it to media outlets,
 9 was "engaged in the business" as that term and its parts are defined in 18 U.S.C. § 921(21) and
 10 (22). Haig sold ammunition to Paddock on at least two occasions, once at a gun show in Las
 11 Vegas, Nevada, and once at Haig's home in Arizona. It is the government's very high burden to
 12 prove beyond a reasonable doubt that Haig was engaged in the business of manufacturing
 13 ammunition. Each and every sale to each and every customer becomes critically important to the
 14 government meeting its burden

15 Haig's sales to Paddock bear a critical and unique probative value above and beyond his
 16 sales to any other customers: there is forensic toolmark evidence for these sales, which shows
 17 that Haig was actually selling the ammunition that he manufactured, rather than merely reselling
 18 ammunition manufactured by others. Section 921(21) also imposes on the government the
 19 burden to prove that the defendant engaged in the "sale or distribution of *the ammunition*
 20 *manufactured*" (emphasis added). In other words, it is not sufficient to prove that the defendant

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 23 ⁷ ("Although it may be true that there is a degree of ambiguity in locating precisely the border between, on the one
 24 hand, an unlicensed dealer that unlawfully engages in the regular business of dealing firearms and, on the other
 hand, an unlicensed hobbyist that lawfully engages in periodic sales, the jury here found Shipley guilty of making,
 over a number of years, numerous repetitive sales in quick succession, sometimes to repeat customers, and such
 conduct is unquestionably prohibited by the statutes' text.").

sold or distributed *some* ammunition, the government must prove that the defendant sold the ammunition manufactured in the course of his illegal business. In light of that requirement, there is no evidence in the case more probative than Haig's ammunition sales to Stephen Paddock and the subsequent recovery and forensic examination of ammunition found in Paddock's Mandalay Bay suite. The toolmarks on that ammunition match the reloading press assembly line set up in Haig's residence. There is no other evidence in the case that will so powerfully demonstrate these elements of a 922(a)(1)(B) charge. Finally, as will be explained below, Haig's lies about his ammunition manufacturing business, key evidence of 922(a)(1)(B)'s willfulness element, are only demonstrated through this evidence about the sales to Paddock, Haig's statements about Paddock, and the forensic matching of the manufacturing toolmarks on Paddock's ammunition to Haig's reloading equipment.

(ii) Haig's Sale of Ammunition to Paddock is Necessary to Contextualize Haig's Lies to Law Enforcement and the Media About Whether He Sold Reloaded Ammunition or Armor Piercing and Incendiary Ammunition—Those Lies are Critical Evidence Demonstrating that Haig's Mental State Meets Section 922(a)(1)(B)'s Willfulness Element

A critical challenge in proving the charge of engaging in the business of selling ammunition without a license is to prove that the defendant acted willfully, i.e., he knew that his conduct was unlawful. The Ninth Circuit has recognized the difficulty of proving the willfulness element, including in prosecution of firearms offenses. *See United States v. Hernandez*, 859 F.3d 817, 824 (9th Cir. 2017).⁸ A defendant's lies about or false characterizations of their conduct in relation to the sale or possession of firearms constitutes strong evidence of Section 922's

⁸ (“This is not to suggest that the government is not permitted to prove willfulness by circumstantial evidence, including evidence of other bad acts or crimes under Rule 404(b) of the Federal Rules of Evidence. Indeed, the government may, and doubtless will, do so in many cases because so rarely is there evidence of what a defendant thought at the moment he committed a criminal act; his intent must often be inferred from his surrounding conduct.”).

1 willfulness element. *See, e.g., United States v. Tyson*, 653 F.3d 192, 202–03 (3d Cir. 2011) (“The
 2 jury could reasonably conclude that by calling himself a ‘collector,’ and by describing his firearms
 3 as ‘antiques,’ Tyson crafted a falsehood with the statute’s exemptions in mind. Such behavior
 4 betrays knowledge of unlawful conduct.”); *United States v. Lipp*, 533 F. App’x 418, 422–23 (5th
 5 Cir. 2013) (“Evidence that Lipp denied being under indictment came from Deputy Castillo, who
 6 asked Lipp …whether he had ever been charged with a felony or been contacted by law
 7 enforcement, and Lipp answered, ‘No.’ Such dissembling could be the basis for jurors to infer he
 8 knew it was illegal for him to have this firearm.”). The court also considers lies and false
 9 statements as evidence of the willfulness element in non-firearms cases. For instance, in assessing
 10 willfulness in the tax evasion context, the Ninth Circuit has “held that evidence of attempts to
 11 conceal pertinent information can be treated as circumstantial evidence that a defendant knew
 12 he or she was violating the law.” *United States v. Tipton*, 56 F.3d 1009, 1013 (9th Cir. 1995), *as
 13 amended on denial of reh’g* (July 21, 1995) (citing *United States v. Marabelles*, 724 F.2d 1374, 1379–
 14 80 (9th Cir. 1984)); *see also id.* (noting *Marabelles* held “fact that defendant lied to IRS agents about
 15 his tax record-keeping was evidence that he willfully attempted to evade taxes[.]”).

16 As soon as Haig came into contact with law enforcement and was asked about Paddock,
 17 he started lying about the types of ammunition he sold, whether he sold reloaded ammunition,
 18 and other details of his ammunition manufacturing business. He continued those lies in
 19 subsequent law enforcement interviews and in media appearances where he identified himself as
 20 having only sold “tracer ammunition” to Paddock on a single occasion as part of his “strong
 21 hobby” of ammunition sales. The full context and details of Haig’s statements are inextricably
 22 intertwined with the investigation into his interaction with Paddock and also with the firearms
 23 evidence recovered from Paddock’s suite. Even more critical, however, is that Haig’s statements
 24 are demonstrated to be lies based on the physical collection and forensic investigation of the

1 firearms evidence in Paddock's Mandalay Bay suite.

2 *Haig's False Statements to Law Enforcement on October 2-3, 2017 Regarding His Ammunition*
 3 *Sales to Paddock*

4 During the FBI/ATF's first interview of Haig on October 2, 2017,⁹ he stated that he sold
 5 Paddock 600 rounds of .308 caliber tracer ammunition and some amount of .223 tracer
 6 ammunition after meeting Paddock at a Phoenix gun show. When asked where he sourced the
 7 ammunition that he sold to Paddock, Haig stated that the ammunition was manufactured by
 8 Lake City Army Ammunition Plant (Lake City).¹⁰ Haig stated that Lake City often sells
 9 ammunition to the public as part of an inventory "overrun." Haig indicated that he buys the
 10 "overrun" ammunition in bulk from places like J&G Sales in Prescott, Arizona. Haig agreed to
 11 provide photos of the type of ammunition he sold to Paddock.

12 During this first interview, agents asked Haig if he manufactured the ammunition that he
 13 sold. Haig stated that he did not manufacture the ammunition that he sold. He went on to state
 14 that his customers often think he does manufacture the ammunition and he does not correct
 15 them. Haig explained that he believed allowing people to think that he manufactured the
 16 ammunition helped increase his sales.

17 Haig was interviewed a second time on October 2, 2017. He presented samples of the
 18 ammunition he purported to have sold to Paddock. The agents photographed the ammunition
 19 and observed that the ammunition's cartridge cases bore the Lake City headstamp. The
 20 ammunition presented by Haig was tracer ammunition, not armor piercing or incendiary
 21 ammunition. Haig repeated the claim that he sources his ammunition from Lake City overruns.

22 Haig was specifically asked if he makes his own ammunition. Haig stated that he does so,

23 ⁹ This interview occurred at Haig's place of work. Haig's coworker/associate, A.F., was present for this first meeting.

24 ¹⁰ Previously fired Lake City cartridge cases are frequently used to manufacture ammunition on a reloading press
 due to their high quality and ability to be reloaded into a new finished piece of ammunition multiple times.

1 but only for personal use. Haig was also asked if there was the possibility that his personally
 2 manufactured ammunition could be sold to a customer. He stated that would "never happen."
 3 Haig explained that he does not have the liability insurance to cover him in the event one of his
 4 personally made cartridges malfunctioned, resulting in damage to a firearm or injury to the end
 5 user. Haig also stated that his reputation for having quality ammunition was too valuable to
 6 jeopardize by selling personally manufactured ammunition. He also stated that he keeps his
 7 personal ammunition separate from the ammunition he sells so there is no mixing of the two.
 8 Haig specifically denied that any of the ammunition found at the Route 91 scene would match
 9 his reloading press.

10 On October 3, 2017, Haig called an ATF agent and advised that he and A.F. were talking
 11 and they were confident that they sold some ammunition to Paddock at a Las Vegas gun show.
 12 Haig stated that he recalled selling Paddock 30-40 rounds of .308 tracer ammunition.

13 *Haig's False Statements to Media Outlets About His Sales of Ammunition to Paddock and His*
 14 *Ammunition Business as it relates to Paddock*¹¹

15 In a sitdown interview with ABC15 Arizona at which his attorney was present,¹² Haig
 16 described his sale of "tracer ammunition" to Paddock. Haig was careful to conspicuously describe
 17 the ammunition sold to Paddock as "surplus military" ammunition, i.e., ammunition that was
 18 not reloaded: "I sold him 600 rounds of .308 tracer, *surplus military*. I sold him 125 rounds of 5.56
 19 tracer, *again, surplus U.S. military*. Put it in a box for him. He paid me, put it in his car and left."

20

21 ¹¹ This section discusses false statements Haig made to various media outlets during press conferences and interviews.
 22 Haig was accompanied by his defense counsel during these press events and the attorney at times made factual
 23 assertions that appear to have been relayed to him by Haig. Some of these factual assertions were false based on later
 24 forensic results and other investigation. It is important to note that the defense attorney was not in a position to
 know that Haig's statements to him or the media were false, and these press events preceded key forensic findings
 and public disclosure of investigative details. It seems clear that the attorney was acting ethically in performing his
 responsibilities as Haig's advocate and never knowingly sought to mislead the press or interviewers.

¹² This video has been produced in discovery and remains available on the news outlet's Facebook page. See
<https://www.facebook.com/ABC15/videos/douglas-haig-interview/10155550027241359/> (accessed January 18, 2019).

(emphasis added).¹³ At another point in the conversation, at the interviewer's request, Haig gave an extended discussion of what tracer ammunition is, how it is used militarily and recreationally, and that it was not unusual for a person to want to buy 600 rounds of tracer ammunition as Paddock had. Haig told the interviewer that a person can go into most of the sporting and gun shops in the area and "buy this kind of ammunition."

Haig characterized the sale of "tracer ammunition" to Paddock as occurring two or three weeks before the October 1 shooting. Haig claimed that he knew Paddock did not use the ammunition purchased from him because tracer ammunition would have been detrimental to Paddock's plan since it would identify his shooting position to law enforcement: "I don't even know why he bought it because tracer ammunition, what a lot of people don't know, that flare works both ways. Everybody could have seen where the shots were being fired from. It's like a red line, right back to where the shots are coming from."

Haig and his attorney also gave a press conference on February 2, 2018 where they discussed and took questions regarding the sale to Paddock and its relation to the nature of Haig's ammunition selling business.¹⁴ With Haig standing inches away, the attorney described Haig as being engaged in "the ammunition resale business, part time, [since] back in 1991, *mostly as a hobby*" (emphasis added). The attorney characterized Haig's sale of ammunition to Paddock as consisting of a single instance of selling "720 rounds of tracer ammunition to Mr. Paddock. *That ammunition was not modified in any way whatsoever from the manufacturer's specs.*" (emphasis added). He further described the sale of ammunition to Paddock as "a *routine* transaction to purchase a

¹³ It was public knowledge at this point that the box with Haig's address and ammunition with his fingerprints had been found in Paddock's suite.

¹⁴ This video has also been produced in discovery and is available in two parts on YouTube at <https://www.youtube.com/watch?v=KpvtBTBhySI> (accessed January 18, 2019) and <https://www.youtube.com/watch?v=EEDJNjGK1ds> (accessed January 18, 2019).

1 *routine* type of ammunition that is available in many different retail outlets throughout the state
 2 of Arizona.” The attorney asserted that Haig “answered all of [the FBI/ATF agents’] questions
 3 truthfully and he actually offered some samples of *the exact type of ammunition that he sold to Mr.*
 4 *Paddock.*” (emphasis added). The attorney also claimed that Haig and Paddock “had one
 5 transaction and one transaction only[.]”¹⁵

6 When a reporter asked Haig if Paddock’s ammunition purchase was special in nature,
 7 Haig said, “No, no. What he bought was *surplus* U.S. military tracer ammunition. Six hundred
 8 rounds 7.62 NATO M62, manufactured by Lake City. One hundred twenty rounds of 5.56 M196,
 9 uh, *manufactured by Lake City*, in the original packaging.” (emphasis added). In response to
 10 another reporter’s question, Haig stated that he knew his ammunition was not fired during the
 11 shooting because he had sold “tracer ammunition” which is highly visible when fired and “red
 12 streaks” would have been seen coming from the window of Paddock’s suite.

13 *The Investigation of Paddock’s Firearms and Ammunition Demonstrate that Haig Lied During His*
 14 *Interviews with Law Enforcement and the Media*

15 As the ATF and FBI continued to investigate the firearms evidence from Paddock’s suite,
 16 it became apparent that Haig had lied to them about multiple material aspects of his sales to
 17 Paddock and his ammunition business as it related to Paddock. The false nature of these
 18 statements was principally determined by the forensic examination of the ammunition recovered
 19 from five rifles and a magazine found in Paddock’s suite. And additional investigation showed

21
 22 ¹⁵ The Federal Rules of Evidence attribute the attorney’s statements to Haig as direct and adoptive admission by a
 23 party-opponent. As Haig’s agent, the attorney’s statements are attributable to Haig under Rule 801(d)(2)(C)-(D)
 24 (excluding from the hearsay rule statements that are “offered against an opposing party and:... (C) [] made by a
 person whom the party authorized to make a statement on the subject; [or] (D) [] made by the party’s agent or
 employee on a matter within the scope of that relationship and while it existed[.]” The context and nature of the
 press conference clearly establish that the attorney’s statements are Haig’s statements as adoptive admissions. *See id.*
 at (d)(2)(B) (excluding from the hearsay rule statements in which a “party manifested that it adopted or believed to
 be true[.]”)

1 that Haig had repeatedly lied about the type of ammunition he sold and other details of his
2 ammunition business.

3 First, when discussing the sales to Paddock, Haig lied when he told the FBI/ATF agents
4 that he only sold “overruns” of ammunition from Lake City and did not sell his own reloaded
5 ammunition to customers. Armor piercing ammunition found in two of Paddock’s rifles, a Lewis
6 Machine & Tool AR-10 rifle with telescopic scope and bipod and a Sig Sauer AR-10 rifle with
7 red-dot scope and bipod, were forensically matched to one of the reloading presses seized from
8 Haig’s residence. Incendiary ammunition found in Paddock’s Ruger brand AR-10 rifle was also
9 forensically matched to the same reloading press seized from Haig’s residence. One of the armor
10 piercing cartridges in that firearm also contained Haig’s fingerprint. Likewise, incendiary
11 ammunition found in Paddock’s Ruger brand bolt-action rifle (7.62 x 51mm/.308 caliber) with
12 telescopic scope was also forensically matched to the same reloading press seized from Haig’s
13 residence. A fifth rifle used by Paddock, a POF USA brand AR-10 with scope and bipod, also
14 contained armor piercing ammunition forensically matched to the same reloading press seized
15 from Haig’s residence. Finally, a Magpul brand magazine recovered from Paddock’s suite
16 contained armor piercing 7.62 x 51mm/.308 caliber ammunition forensically matched to the
17 same reloading press seized from Haig’s residence. Haig’s fingerprints were recovered from two
18 of the cartridges found inside this magazine. This forensic examination of the firearms evidence
19 seized from Paddock’s suite irrefutably demonstrates that Haig lied to the agents when he denied
20 selling ammunition manufactured on his reloading press. Finally, further demonstrating Haig’s
21 false statements, an official from the company that owns the Lake City ammunition plant will
22 testify at trial that Lake City did not manufacture the type of ammunition that Haig sold to
23 Paddock.

24 Next, Haig lied to the FBI/ATF agents when he claimed that he sold Paddock “tracer

1 ammunition.” As discussed above, the ammunition recovered from the five rifles and the
 2 magazine in Paddock’s suite was not tracer ammunition. It was forensically determined to be
 3 either armor piercing or frangible incendiary ammunition, and it was forensically matched to
 4 Haig’s reloading press.¹⁶ Moreover, Haig went out of his way to present the agents with what he
 5 falsely claimed were samples of the tracer ammunition he claimed to have sold Paddock. Thus,
 6 the examination of the firearms evidence from Paddock’s suite demonstrates another significant
 7 and material lie that Haig told about his ammunition business in relation to Paddock.

8 In interacting with the media, Haig repeated many of these same lies. He lied about the
 9 ammunition sold to Paddock as being “surplus U.S. military” when in fact the firearms toolmark
 10 examination showed that it had been manufactured on Haig’s reloading press. He gave lengthy
 11 false descriptions of selling “tracer ammunition” to Paddock, not armor piercing or incendiary
 12 ammunition. He assured the media that the ammunition was “routine,” widely available in
 13 stores, and was “not modified” in any way from the original “manufacturer’s specs.” These
 14 statements were false. Armor piercing ammunition, in fact, is not available to the public in stores,
 15 and its manufacture, sale, and distribution is highly regulated so that it is not available to the
 16 general public. *See, e.g.*, 18 U.S.C. § 922(a)(7)-(8) (establishing criminal penalties for the sale,
 17 delivery, or importation of armor piercing ammunition outside government channels and for
 18 export). Similarly, incendiary ammunition is not widely available in stores. Haig also lied about
 19 offering law enforcement samples of the “exact type of ammunition” sold to Paddock. The
 20 samples Haig provided were tracer ammunition, not his self-manufactured armor piercing or
 21 incendiary rounds actually sold to Paddock.¹⁷ Finally, he lied about engaging in only “one

22
 23 ¹⁶ Pieces of Paddock and Haig’s ammunition were subjected to metallurgical analysis, x-ray analysis, disassembly,
 24 and test firing. The armor piercing ammunition Haig sold to Paddock contained steel core or steel ball penetrators
 designed to penetrate armor.

¹⁷ Even Haig’s statements about tracer ammunition were lies. The search warrant revealed that Haig was

1 transaction" with Paddock when in fact he sold Paddock ammunition multiple times and in two
 2 different states.

3 Haig was also dishonest with the media when, in the context of discussing the sales to
 4 Paddock, he characterized his ammunition business as a "hobby." During the ABC15 Arizona
 5 sit-down interview, the interviewer asked Haig how long he had been selling ammunition. Haig
 6 responded by stating: "It's a hobby. It's a hobby. It's interested me...I've...been doing it as a, uh,
 7 strong hobby since 1991." During the February 2, 2018 press conference, a reporter asked if
 8 Haig's ammunition business was "a side job." Haig told the reporter, "It's a hobby. It's a hobby."
 9 The investigation, including the search warrant executed on Haig's residence, revealed this
 10 statement to be a lie. Haig operated his business, Specialized Military Ammunition (SMA),
 11 through an Arizona Limited Liability Company registered with the Arizona Secretary of State.
 12 Haig's manufacturing business operated as any other business. He maintained a website where
 13 customers could submit orders for armor piercing, armor piercing incendiary, and high explosive
 14 armor piercing incendiary ammunition. He used business cards to advertise SMA's business and
 15 products. He included those cards and trade dress in the ammunition that he sold or shipped to
 16 his customers, including Paddock. He maintained sales invoices and receipts on business records
 17 marked with SMA's logo and trade dress. He priced his products for individual sale and had at
 18 his residence extensive inventory pre-marked for shipment or sale at the time of the search
 19 warrant. Haig also maintained additional written records and notes showing orders and
 20 shipments of ammunition. This "strong hobby" lie told to the media while discussing Paddock is
 21 quintessential evidence of willfulness because it demonstrates that Haig was aware that the
 22 licensing requirement applied to individuals who manufactured ammunition as something other

23
 24 manufacturing tracer ammunition as well as armor piercing and incendiary ammunition.

1 than a hobby. *See, e.g., Tyson, supra.*

2 These many lies to law enforcement and the media in the context of discussing the sales
 3 to Paddock constitute highly probative evidence demonstrating that Haig knew he was engaging
 4 in an unlawful business. This critical evidence of Haig's mental state and willful violation of the
 5 law should not be excluded. To do so would unfairly impair the government's case-in-chief and
 6 deprive it of uniquely powerful evidence that Haig violated Section 922(1)(1)(B) through
 7 operation of his illegal ammunition manufacturing business.

8 **(iii) Haig's Media Statements About Paddock Also Provide Critical Evidence of
 9 His Pursuit of Ammunition Manufacturing as a Business, Rather than a
 10 Hobby, and His Willfulness Based on Statements that He was Familiar with
 11 the Law Regarding Ammunition Sales**

12 The full context of a defendant's statements regarding the scope of his firearms dealing
 13 activity is important to enable the government to demonstrate that the defendant was actually
 14 engaging in the business without a license rather than acting as a mere hobbyist or collector
 15 liquidating a collection. *Cf., e.g., United States v. Masters*, 622 F.2d 83, 87-88 (4th Cir. 1980).¹⁸
 16 When being interviewed by the media about the sales to Paddock, Haig made several damaging
 17 admissions demonstrating that: (1) his repetitive sales of ammunition constituted more than a
 18 hobby; and (2) he was familiar with the laws regarding ammunition sales.

19 During the ABC15 Arizona sit-down interview, Haig stated that it was "not really" a
 20 nerve-wracking experience when the FBI contacted him about Paddock. He explained that he
 21 "figured something happened with something I sold, and they wanted to find out what I knew
 22 about the person, and that's pretty much what it was." This statement about Paddock

23 ¹⁸ (in unlicensed dealing case, affirming district court finding that government entitled to introduce entire statements
 24 of the defendant, including uncharged and other crimes because it allowed government to "complete the story of
 the crime on trial by proving its immediate context of happenings near in time and place[,]'" and "evidence could
 not be 'fragmentized' without distorting or impairing the Government's proof of the crime.").

1 demonstrates that Haig sold enough ammunition to enough people that he was not surprised
 2 when the FBI and ATF contacted him about a criminal investigation, which he quickly assumed
 3 involved one of his ammunition sales. This demonstrates that Haig sold to many people, and
 4 thus is highly probative evidence that his ammunition manufacturing and sales constituted
 5 something more than a hobby due to the volume of repeat sales.

6 Immediately after that statement about Paddock and without another question being
 7 posed, Haig went into discussing his extensive experience with different kinds of customers. He
 8 did this in the context of juxtaposing Paddock's lack of any warning signs with his experience
 9 refusing to sell to some customers:

10 *So, I've seen all kinds of people. I will admit...he [Paddock]...there were no*
 11 *tells...there...some people, you just get a feeling or a vibe, or they say something,*
 12 *or they ask the wrong question, and, "Nope, sorry, not going to sell it to you. I*
*don't like what I think you're going to do with this." Just refuse service...*Oh, yeah,**
all the time.

13 (emphasis added).

14 The interviewer asked Haig how many times he has refused to sell ammunition to a buyer. His
 15 response was: "On a weekend? At a gun show? probably four or five times." These statements
 16 made in the context of discussing the sales to Paddock and the absence of any warning signs
 17 given off by Paddock constitute damaging admissions that Haig had sold ammunition to so many
 18 different types of people (or refused to sell to them) that he was studied in reading customers.
 19 This vast experience with the ammunition business and potential customers is powerful evidence
 20 that Haig was engaged in a business, not "a strong hobby."

21 Haig's statements about Paddock also demonstrated that he had sold to enough people
 22 while carrying on the business that he knew whether the amount of ammunition Paddock
 23 purchased was common or unusual for ammunition sales. During the ABC15 Arizona interview,
 24 Haig stated that it was not unusual for a person to want to buy 600 rounds of "tracer ammunition"

1 as Paddock had. Similarly, in the February 2 press conference, Haig was asked if it was common
2 for a person to buy from him the amount of ammunition that Paddock purchased, 720 rounds.
3 Haig responded that it was, "Very common. Very common." These statements about the sales to
4 Paddock constitute highly probative evidence establishing Haig's familiarity with the
5 ammunition business and market/customer demand. Again, this distinguishes his conduct as a
6 business, not "a strong hobby."

7 During his media appearances, Haig was asked questions about the legality of his conduct
8 in selling tracer ammunition to Paddock. Haig was asked by a reporter to explain the legalities of
9 ammunition sales. Haig told the reporter that there was no federal or state law prohibiting the
10 sale of tracer ammunition. When discussing the absence of warning signs with Paddock and his
11 frequent refusal to sell to suspicious customers, Haig explained that he was familiar with legal
12 limitations on the sale of ammunition and demonstrated his knowledge of different ammunition
13 laws:

14 Interviewer: What did you think [when refusing to sell ammunition to some
15 customers], they had a bad intent, or they were going to smuggle it across the
border to Mexico, or like...?

16 Haig: It could be anything, um, people coming over from California wantin' to
17 buy tracer. Tracer is illegal in California. 'Sorry, not gonna sell it to you.' So, even
18 though it's perfectly legal for them to buy it here, I don't want to be associated with
anything they get in trouble for in their own state."

19 This statement about his business and Paddock then constitutes evidence that Haig was generally
20 aware of laws governing the sale of ammunition. *Cf., e.g., United States v. Simmons*, 163 F. App'x
21 403, 406 (7th Cir. 2006) (among other factors showing sufficient evidence of defendant's
22 willfulness were his "statements about gun shows ... illustrating his awareness of exceptions in
23 current gun licensing and sale laws."). A jury can use this evidence of Haig's familiarity with
24 ammunition laws to infer that he acted willfully in disregarding the prohibition on engaging in

1 the business of manufacturing ammunition without a license. All of the foregoing statements
 2 made in the context of Haig discussing the sales to Paddock are highly probative evidence
 3 establishing his commission of Section 922(a)(1)(B)'s *actus reus* and *mens rea*.

4 **(iv) Paddock's Purchase of Armor Piercing and Incendiary Ammunition from
 5 Haig is Highly Probative of Haig Operating an Illegal Ammunition
 6 Manufacturing Business – Paddock Had a Specific Objective to Obtain
 7 Ammunition with Armor Piercing and Incendiary Capability, and Haig
 8 Marketed Precisely that Type of Ammunition on the Internet and at Gun
 9 Shows**

10 Prior to taking it down after the October 1 shooting, Haig's SMA website advertised the
 11 availability of high explosive armor piercing incendiary ammunition, armor piercing incendiary
 12 ammunition, and armor piercing ammunition. Haig also routinely sold this type of ammunition
 13 at gun shows. The investigation of Paddock's shooting documented that Paddock planned and
 14 attempted to use gunfire to breach and explode fuel tanks connected to McCarran International
 15 Airport. Based on that plan, Paddock had a reason to seek out armor piercing and incendiary
 16 ammunition, not tracer ammunition. Paddock went out of his way to make contact with Haig
 17 both in Nevada and Arizona to obtain ammunition. This aspect of Paddock's conduct and the
 18 shooting therefore has strong probative value in showing that Haig was known as a supplier and
 19 marketer of armor piercing and incendiary ammunition, not the more commonplace and easily
 20 obtainable tracer ammunition. That Paddock would ultimately get his armor piercing and
 21 incendiary ammunition from Haig demonstrates that Haig was engaged in a business of
 22 manufacturing ammunition, not "a strong hobby."¹⁹

23 // /

24 ¹⁹ It is worth noting that, if Paddock was attempting to obtain only tracer ammunition, he would have no reason to
 25 go to such lengths to buy ammunition from Haig. Haig and his attorney have emphasized the wide availability of
 26 tracer ammunition in sporting and gun stores. If that is the case, Paddock would have been able to purchase his
 27 ammunition from one of those many stores, including in Nevada where the state firearms laws are not so different
 28 than Arizona's.

(v) Haig's Sale of Ammunition to Paddock and the Recovery of that Ammunition in Las Vegas is Essential to Countering a Venue Defense and Permitting the Government to Meet Its Burden at Trial

Venue is an element of the government's case in a criminal prosecution. *United States v. Buckhanon*, 505 F.2d 1079, 1083 (8th Cir.1974). And the government must prove at trial by a preponderance of the evidence that venue is proper. *United States v. Grammatikos*, 633 F.2d 1013, 1022 (2d Cir. 1980). The Ninth Circuit holds that venue is an issue to be determined by the jury at trial. *United States v. Lukashov*, 694 F.3d 1107, 1120 (9th Cir. 2012). Haig has unsuccessfully challenged venue on a pretrial basis. ECF No. 23; 36. He is therefore likely to again challenge venue at trial and request that the jury be instructed on the issue. He likely will also renew his venue challenge through a Rule 29 motion at the conclusion of the government's case-in-chief. The evidence of Haig traveling to Las Vegas, Nevada and selling ammunition to Paddock at a gun show, and the recovery of that ammunition in Paddock's suite in Nevada is critical evidence to proving proper venue. Likewise, Paddock's conduct of flying to Arizona where he purchased ammunition from Haig and then drove it back to Nevada is also key venue evidence. Haig's attack on the venue for this prosecution is another reason why evidence of the Paddock sales and recovery of the firearms evidence from Paddock's suite is probative and highly relevant to a fact of consequence at trial. It would be a perverse outcome if Haig obtained this dramatically overbroad suppression of core probative evidence collected in the District of Nevada and then sought to attack venue at trial, claiming his criminal activity only took place in another federal district.²⁰

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²⁰ For the many reasons already stated, and because Haig's sales to Paddock are direct evidence of his commission of the charged crime, the evidence would still need to be presented even if Haig elected to waive any alleged venue challenges.

1 **C. There Are Many Details About the October 1 Shooting and Paddock that the**
2 **Government Has No Plans to Present at Haig's Trial**

3 While Haig's ammunition sales to Paddock, statements about those sales, the recovery of
4 that ammunition, and the resulting forensic analysis are an essential, core part of its case-in-chief,
5 the government has no plan to introduce many of details from the investigation of Paddock and
6 his attack. Unless Haig makes them relevant during the course of the trial through certain
7 defenses or opening the door to particular topics, the government has no intention to present in
8 its case-in-chief many of the details about the investigation of Paddock and the October 1
9 shooting. The government has no intention to present evidence of the following matters:

- 10 • Evidence relating to any shooting victims or the Route 91 concert venue crime
11 scene;
- 12 • Photographs or video of Stephen Paddock in any state or place, before or after the
13 shooting;
- 14 • Photographs or descriptions of Paddock's suite that do not relate to recovery of the
15 ammunition later identified as matching Haig's reloading press;
- 16 • Photographs or descriptions of Paddock's firearms and ammunition that are not
17 connected to Haig's ammunition business;
- 18 • Portions of Haig's media statements that do not relate to his ammunition sales to
19 Paddock or statements about his ammunition business; and
- 20 • Portions of Haig's statements that relate to the casualties inflicted during the
21 October 1 shooting, or that otherwise relate details not involving his sale of
22 ammunition to Paddock and his operation of the ammunition manufacturing
23 business;

24 Finally, while it does not appear to be strictly required under the law or the facts of this case, the

1 government does not object to fashioning a limiting instruction in cooperation with the defense,
2 which would admonish the jury regarding the purposes for which it may consider Haig's sale of
3 ammunition to Paddock and the evidence recovered from Paddock's suite. Those steps are more
4 than sufficient to ensure that the government is able to present this critical evidence while also
5 eliminating any risk of unfair prejudice to Haig.

6 **III. Conclusion**

7 WHEREFORE, after consideration of the included facts, points, authorities, exhibits, and
8 arguments, the United States respectfully requests that this Court DENY Haig's "Motion to
9 Preclude Irrelevant and Unduly Prejudicial Evidence." ECF No. 40.

10
11 DATED this 22nd day of January, 2019.

12 Respectfully submitted,

13 NICHOLAS A. TRUTANICH
United States Attorney

14 //s// Patrick Burns

15
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CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S "MOTION TO PRECLUDE IRRELEVANT AND UNDULY PREJUDICIAL EVIDENCE" [ECF No. 40]** was served upon counsel of record, via Electronic Case Filing (ECF).

DATED: this 22nd day of January, 2019.

//s// Patrick Burns

PATRICK BURNS
Assistant United States Attorney